THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.6073 of 2006

Date: 09.06.2006.

Between:

K.Narasinga Rao, S/o.K.Swamynatha Rao,

Aged about 59 years, Occ: Sub-Post Master,

Aravindanagar, Ananthapur,

R/o.Ananthapur.

....petitioner.

AND

The Post Master General and three others.

.....Respondents.

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.6073 of 2006

ORDER: **(Per Hon'ble Sri Justice M.Venkateswara Reddy)**

The petitioner is questioning the order, dated 20.03.2006, made by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, (for short "the Tribunal") allowing the O.A.No.997 of 2005 filed by the 4th respondent.

The petitioner as also the 4th respondent are Sub-Post Masters in the Postal Department. Both of them were working in Anantapur Town. As per notification, dated 09.03.2005, issued by the Postal Department they are entitled to give three places of option for their transfer. The 4th respondent by his letter, dated 24.03.2005, opted for three places in Anantapur town *viz*., Aravinda Nagar, Patel Road and Satyananda Nagar. His request was complied with and he was posted at Aravinda Nagar by proceedings, dated 21.05.2005. The petitioner was transferred to Satyananda Nagar. Both of them joined at their respective places. While so, by Memo No.B3/RT/Trt/2005, dated 15.07.2005, issued by the Superintendent of Post Offices, the 4th respondent was again transferred from Aravinda Nagar to Ammalladinne and the petitioner was posted to Aravinda Nagar. Then, the 4th respondent submitted a representation against the said transfer and even before that representation was disposed of, he approached the Tribunal in O.A.No.613 of 2005. The Tribunal disposed of the said O.A. on 25.07.2005 giving a direction to consider and dispose of the representation of the 4th respondent within a period of one month from the date of communication of the order. While making that order the Tribunal directed the official respondents to maintain status quo till the disposal of the representation of the

4th respondent. The representation of the 4th respondent was disposed of on 24.08.2005 holding that there is no irregularity in the transfer orders and accordingly the representation was rejected. The 4th respondent was relieved thereafter on 15.07.2005. He did not join duty at Ammalladinne. By proceedings, dated 30.11.2005, the Superintendent of Post Offices, Anantapur Division retained the 4th respondent herein at Anantapur temporarily and attached him to Anantapur Head Office upto 31.03.2006. The said order was issued in partial modification of the order, dated 15.07.2005. (The impugned

order reads as if the 2nd respondent issued orders dated 15.07.2005 posting the 4th respondent at Ammalladinne upto 31.03.2006 and being aggrieved by it the 4th respondent filed O.A.No.997 of 2005, in which the impugned order came to be passed.)

One Jangamanna filed an application in O.A.No.783 of 2005 before the Tribunal questioning the memo, dated 15.07.2005 above referred to, under which he was transferred from Ramnagar to Yellanur. The said proceedings covers the transfers and postings of not only the said Jangamanna but also the petitioner, 4th respondent herein and four others. The Tribunal by its order, dated 17.11.2005, set aside the proceedings, dated 15.07.2005, which covers the transfers and posting of seven Sub-Post Masters as stated above.

The 4th respondent approached the authorities with a request to follow the order of the Tribunal made in O.A.No.783 of 2005 in respect of him also, but the Superintendent of Post Offices by his letter, dated 21.12.2005, informed the 4th respondent that the order of the Tribunal in the case of Jangamanna is applicable only to that particular person and others cannot claim the benefit of the order of the Tribunal. Hence, he filed O.A.No.997 of 2005, in which the impugned order came to be passed. The Tribunal took the view that since the office Memorandum No.B3/RT/Tfr/2005, dated 15.07.2005, under which the transfers and posting of seven persons as stated earlier was given is set aside, there cannot be any modification of such order. In other words, the Tribunal came to the conclusion that the modification order, dated 31.03.2006, under which the 4th respondent was given temporary posting, would not stand. In fact, the order discloses that the Standing Counsel appearing for the Government and the Postal authorities conceded that there cannot be any modification of an order which is not in force and the order of the Tribunal has reached finality. The Tribunal held:

"…It is noticed that the Tribunal has observed that the earlier

> transfer order was made on the basis of the complaint that the said transfer order was issued on the basis of wrong seniority list and thereafter the respondents have rectified seniority position and passed the order on the basis of the seniority list and thereafter the Tribunal held that no such transfer order can be issued on the basis of the draft seniority list which has not been finalized.
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> 4. In view of the above facts and circumstances, I am of the view that when the transfer order dated 15.7.2005 is not in force, there cannot be any modification of such order. Therefore, the impugned order dated 30.11.2005 is illegal and nonest and, therefore, cannot be acted upon. The respondents are, therefore, directed to take action to call back the applicant and regularize the period of absence/leave taken by him as per rule."

The petitioner is now questioning the said order in these proceedings.

It is submitted that the petitioner is retiring in the month of June, 2005 on attaining the age of superannuation. On 27.03.2006 this Court ordered maintenance of status quo as obtaining on that date. As such, the petitioner is continuing at Aravindanagar, Anantapur. It is alleged in the petition at para 11 as under:

> "11. It is submitted that, despite being retained at Ananthapur town itself, the Respondent No.4 herein is bent upon being posted as Sub-Post Master, Arvindanagar for the reasons best know to him, even though the plea taken in his earlier Original Application was that his children are studying in Ananthapur. The Respondent No.4 herein cannot have any grievance as he is retained at Ananthapur town. Furthermore, it is submitted that, I have got only 3 months service to attain the age of superannuation and I would be retiring from service in June 2006 and therefore I may be permitted to continue at my present place of posting, in view of the facts and circumstances."

Inasmuch as the Tribunal held that the order, dated 15.07.2005, under which seven Sub-Post Masters were given transfers and postings, was set aside by

the Tribunal by its order, dated 17.11.2005, in O.A.No.783 of 2005 and the consequential modification order, dated 31.03.2005, is nonest, the transferees under the order, dated 15.07.2005, have to be given fresh postings. The petitioner apprehends that he will be disturbed from Aravinda Nagar. It is the transferring authority that has to exercise power of transfer and posting. This Court cannot relegate itself to the position of the transferring authority. As already stated, the petitioner is retiring on 30.06.2006 on attaining superannuation. It is for the transferring authority to consider the case of the petitioner whether to retain him at Aravinda Nagar depending on the exigencies of administration, since he is retiring by the end of this month. It is not as if the petitioner is now disturbed from Aravinda Nagar. It is only the apprehension that he will be disturbed from Aravinda Nagar that brought the petitioner to this Court. He cannot attribute malafides at this stage and contend that the transferring authority would not exercise power of transfer bona fide. Therefore, we do not see any legal injury suffered by the petitioner at this stage and we are of the opinion that the writ petition is liable to be dismissed.

The writ petition is accordingly dismissed, but in the circumstances without costs.

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J.CHELAMESWAR, J.

Date:09.06.2006.

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M.VENKATESWARA REDDY, J.

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